

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT
OF WASHINGTON AT SEATTLE

In re

ALAN J. DIOLATA and REGINA C.
DIOLATA,

Debtors.

ALAN J. DIOLATA and REGINA C.
DIOLATA,

Plaintiffs,

v.

SALLIE MAE, INC., and/or its successors and
assigns; AMERICAN EDUCATION
SERVICES LLC, and/or its successors and
assigns; FIRST MARBLEHEAD
CORPORATION, and/or its successors and
assigns; GREAT LAKES EDUCATIONAL
LOANS SERVICES INC., and/or its successors
and assigns; CHASE AUTO FINANCE
CORPORATION, and/or its successors and
assigns; DEVRV UNIVERSITY, and/or its
successors and assigns; EDUCATIONAL
CREDIT MANAGEMENT CORPORATION,
and/or its successors and assigns; ET AL

Defendants.

Case No. 10-12650-SJS

Adv. Pro. No. 10-01484-SJS

ANSWER OF EDUCATIONAL CREDIT
MANAGEMENT CORPORATION

1 Educational Credit Management Corporation (“ECMC”) hereby submits its answer to
2 the amended complaint filed by Alan J. Diolata and Regina C. Diolata (“Plaintiffs”) to determine
3 dischargeability of educational loan debts (the “Complaint”):
4

5 **I. JURISDICTION, VENUE AND PARTIES**

6 1.1 ECMC denies that Rule 4001 applies to this adversary. Except as denied, ECMC
7 admits the remaining allegations set forth in paragraph 1.1 of the Complaint.
8

9 1.2 ECMC admits the allegations set forth in paragraph 1.2 of the Complaint.

10 1.3 ECMC admits the allegations set forth in paragraph 1.3 of the Complaint.

11 1.4 ECMC admits the allegations set forth in paragraph 1.4 of the Complaint.
12

13 **II. PARTIES**

14 2.1 As to the allegations set forth in paragraph 2.1 of the Complaint, ECMC states
15 that it is without sufficient knowledge to admit or deny the allegations and therefore denies the
16 same.

17 2.2 As to the allegations set forth in paragraphs 2.2 through 2.6 of the Complaint,
18 ECMC states that it is without sufficient knowledge to admit or deny the allegations and
19 therefore denies the same.
20

21 2.3 ECMC admits the allegations set forth in paragraph 2.7 of the Complaint as it
22 pertains to ECMC being a private, nonprofit guaranty agency (under the Higher Education Act
23 of 1965) and states that it does business out of Minnesota. Except as expressly admitted,
24 ECMC denies the remaining allegations set forth in paragraph 2.7. ECMC further states that it is
25 in the process of receiving transfer of several student loans incurred by the plaintiffs, and when
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that transfer is complete ECMC will be the guarantor of the loans and current holder of same.

The student loans may be described as follows:

Incurred by: Alan J Diolata

Original Guarantor: USA Funds Servicing Agent: Sallie Mae, Inc.

Loan type ¹ :	Disb. Date	Disb. Amount	School
Sub	9/8/2006	\$8,500.00	Keller Graduate School of Management ("Keller")
Sub	9/8/2006	\$4,650.00	Keller
Unsub	3/2/2007	\$2,500.00	Keller
Sub	7/14/2007	\$7,660.00	Keller
Sub	7/14/2007	\$3,830.00	Keller
Unsub	10/16/2007	\$326.00	Keller
Sub	10/16/2007	\$210.00	Keller
unsub	12/5/2007	\$200.00	Keller
Sub	12/5/2007	\$420.00	Keller
Unsub	12/5/2007	\$200.00	Keller
Sub	12/5/2007	\$420.00	Keller
Unsub	7/8/2009	\$3,147.00	Keller
Sub	7/8/2009	\$3,958.00	Keller
		\$36,021.00	

Incurred by: Alan J Diolata

Original Guarantor: California Student Aid Commission Servicing Agent: Sallie Mae, Inc.

Loan type:	Disb. Date	Disb. Amount	School
Sub	2/17/2006	\$1,313.00	Devry University, Federal Way
Unsub	2/17/2006	\$2,000.00	Devry University, Federal Way
sub	10/6/2005	\$2,625.00	Devry University, Federal Way
Unsub	7/30/2005	\$4,000.00	Devry University, Federal Way
		\$9,938.00	

Incurred by: Alan J Diolata

Original Guarantor: Pennsylvania Higher Education Assistance Agency

¹ Sub refers to a subsidized, and Unsub refers to a non-subsized, Federal Family Education Loan Program ("FFELP") guaranteed student loan (aka Stafford loan).

Servicing Agent: American Education Services

Loan type ² :	Disb. Date	Disb. Amount
CONS	5/12/2006	\$34,267

Incurred by: Regina C. Diolata

Original Guarantor: USA Funds, Inc. Servicing Agent: Sallie Mae, Inc.

Loan Type	Disb. Date	Disbursed Amount	Interest Rate ³	School
Sub	11/15/04	\$1,750.00	2.47% V	Int'l Academy of Design & Technology
Unsub	11/15/04	\$2,667.00	2.47% V	Int'l Academy of Design & Technology
Sub	02/11/05	\$1,750.00	2.47% V	Int'l Academy of Design & Technology
Unsub	02/11/05	\$2,666.00	2.47% V	Int'l Academy of Design & Technology
Sub	10/17/05	\$3,500.00	2.47% V	Int'l Academy of Design & Technology
Unsub	10/17/05	\$4,000.00	2.47% V	Int'l Academy of Design & Technology
Sub	07/18/06	\$5,500.00	6.80% F	Int'l Academy of Design & Technology
Unsub	07/18/06	\$5,000.00	6.80% F	Int'l Academy of Design & Technology
Sub	04/17/07	\$5,500.00	6.80% F	Int'l Academy of Design & Technology
Unsub	04/17/07	\$5,000.00	6.80% F	Int'l Academy of Design & Technology
		\$37,333.00		

2.4 As to the allegations set forth in paragraphs 2.8 through 2.13 of the Complaint, ECMC states that it is without sufficient knowledge to admit or deny the allegations and therefore denies the same.

III. APPLICABLE LAW

3.1 ECMC admits the allegations set forth in paragraph 3.1 of the Complaint.

IV. FACTUAL ALLEGATIONS

² CONS refers to a Consolidation loan. A consolidation loan combines one or more student loans incurred while attending school, into one new loan. ECMC's records at this time indicate that the underlying loans to this were incurred for Mr. Diolata's enrollment at Devry University.

³ V refers to a variable rate and F a fixed rate

1 4.1 ECMC is without sufficient knowledge to admit or deny the allegations set forth
2 in paragraph 4.1 of the Complaint and therefore denies the same.

3 4.2 ECMC denies the allegations set forth in paragraph 4.2 of the Complaint as they
4 relate to the student loans incurred by Plaintiff Mr. Diolata and which are being transferred to
5 ECMC, and refers Plaintiffs to paragraph 2.3 above, ECMC further states that it is without
6 sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 4.2 of the
7 Complaint and therefore denies the same.
8

9 4.3 ECMC denies the allegations set forth in paragraph 4.3 of the Complaint as they
10 relate to the student loans incurred by Plaintiff Mrs. Diolata and which are being transferred to
11 ECMC, and refers Plaintiffs to paragraph 2.3 above, ECMC further states that it is without
12 sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 4.2 of the
13 Complaint and therefore denies the same.
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15 4.4 ECMC is without sufficient knowledge to admit or deny the allegations set forth
16 in paragraph 4.4 of the Complaint and therefore denies the same.
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18 4.5 ECMC is without sufficient knowledge to admit or deny the allegations set forth
19 in paragraph 4.5 of the Complaint and therefore denies the same.
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21 4.6 ECMC is without sufficient knowledge to admit or deny the allegations set forth
22 in paragraph 4.6 of the Complaint and therefore denies the same.
23

24 4.7 ECMC is without sufficient knowledge to admit or deny the allegations set forth
25 in paragraph 4.7 of the Complaint and therefore denies the same.

26 4.8 ECMC is without sufficient knowledge to admit or deny the allegations set forth
27 in paragraph 4.8 of the Complaint and therefore denies the same.
28

1 4.9 ECMC is without sufficient knowledge to admit or deny the allegations set forth
2 in paragraph 4.9 of the Complaint and therefore denies the same.

3 4.10 ECMC is without sufficient knowledge to admit or deny the allegations set forth
4 in paragraph 4.10 of the Complaint and therefore denies the same.

5 4.11 ECMC is without sufficient knowledge to admit or deny the allegations set forth
6 in paragraph 4.11 of the Complaint and therefore denies the same.

7 4.12 ECMC is without sufficient knowledge to admit or deny the allegations set forth
8 in paragraph 4.12 of the Complaint and therefore denies the same.

9 4.13 ECMC admits the allegations set forth in paragraph 4.13 of the Complaint.

10 4.14 ECMC denies the allegations set forth in paragraph 4.14 (marked as a second
11 paragraph 4.13) of the Complaint.

12 4.15 ECMC admits the allegations set forth in paragraph 4.15 (marked as paragraph
13 4.14) of the Complaint which states that the Debtors have never made payments on their student
14 loans as that relates to the loans ECMC is being transferred. ECMC further states that student
15 loan borrowers are not entitled to forbearance (34 CFR 682.211). ECMC is without sufficient
16 knowledge to admit or deny the allegations set forth in paragraph 4.15 (marked as paragraph
17 4.14) of the Complaint and therefore denies the same.

18 4.16 ECMC denies the allegations set forth in paragraph 4.16 (marked as paragraph
19 4.15) of the Complaint.

20 **V. PLAINTIFF'S THEORIES OF LIABILITY AN DISCHARGE**

21 5.1 ECMC repeats and realleges its responses to the foregoing paragraphs.

1 5.2 Answering paragraphs 5.2 through 5.5 of the Complaint, ECMC submits that
2 such paragraphs state conclusions of law to which no answer is required. To the extent the
3 Court requires an answer, ECMC denies the allegations set forth in paragraphs 5.2 through 5.5
4 of the Complaint.
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6 **VI. ECMC'S AFFIRMATIVE DEFENSES**

7 Further answering the Plaintiff's Complaint, ECMC by way of affirmative defense states
8 and alleges as follows:
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10 1. The Plaintiffs do not meet the undue hardship standard under the *Brunner* test.
11 *United Student Aid Funds, Inc. v. Pena*, 155 F.3d 1108 (9th Cir. 1998) (citing *Brunner v. N.Y.*
12 *State Higher Educ. Serv. Corp.*, 831 F.2d 395 (2d Cir. 1987)). Specifically, ECMC believes the
13 Plaintiffs: (a) cannot prove that they would be unable to maintain a minimal standard of living if
14 forced to repay their student loan obligations; (b) cannot prove additional circumstances exist
15 which would indicate their state of affairs is likely to persist for a significant period of time; and
16 (c) have already stated that they made no payment on their student loan debt (see paragraph
17 marked 4.14 of the Complaint) and therefore cannot prove a good faith effort to repay the
18 student loan obligations.
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21 2. The Plaintiffs Complaint fails to state with particularity the grounds upon which
22 the student loan obligations should be discharged.
23

24 3. The Plaintiffs have failed to mitigate their damages.

25 4. The Plaintiffs Complaint fails to state a claim against ECMC upon which relief
26 can be granted.
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1 5. Defendant ECMC expressly reserves the right to add additional affirmative
2 defenses as appropriate.

3
4 **VII ECMC'S PRAYER FOR RELIEF**

5 WHEREFORE, having fully answered the allegations contained in Plaintiffs Complaint,
6 Defendant ECMC requests that the court grant the following relief:

- 7 1. That the relief sought by the Plaintiffs be denied.
- 8 2. That the student loan debt incurred by the Plaintiffs and held by ECMC be
9 found to be nondischargeable in its entirety.
- 10 3. That the Court enter judgment in favor of ECMC for the total amount due and
11 owing on the student loans it holds, which amounts shall be proven at trial or by stipulation of
12 the parties after further investigation.
- 13 4. Any further relief that this Court may deem just and proper.

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16 DATED this 24th day of September, 2010

17
18 
19 Michaelanne Ehrenberg, WSBA #25615
20 Daniel J. Bugbee, WSBA #42412
21 Of Karr Tuttle Campbell
22 Attorneys for Educational Credit Management
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DECLARATION OF SERVICE

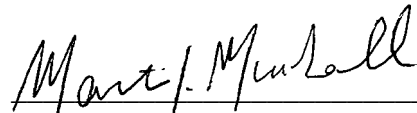
I, Marti J. Munhall, declare as follows:

I am an employee of Karr Tuttle Campbell. On September 24, 2010, I caused to be served, to the party, and using the method shown below, a true and correct copy of the foregoing ANSWER TO COMPLAINT, to:

Alan J. Diolata and Regina C. Diolata c/o Christina Latta Henry	Via CM/ECF: chenry@seattledebtlaw.com , tshim@seattledebtlaw.com ; ign@seattledebtlaw.com ; cnightingale@seattledebtlaw.com ; awong@seattledebtlaw.com
Sallie Mae, Inc. c/o Christine Ford	Via CM/ECF: ECF@cfordlaw.com christine@cfordlaw.com
JP Morgan Chase Bank NA c/o Stephen A Bernheim	Via CM/ECF: steve@stevebernheim.com sherri@stevebernheim.com

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct to the best of my knowledge.

DATED at Seattle, Washington this 24th day of September, 2010.


Marti J. Munhall